

STATE OF MICHIGAN
COURT OF APPEALS

LORI K. SHEMKA,

Plaintiff-Appellant/Cross-Appellee,

v

DONALD W. O'NEAL,

Defendant-Appellee/Cross-
Appellant.

UNPUBLISHED

July 17, 2003

No. 244152

Macomb Circuit Court

LC No. 2002-003815-AW

Before: Hoekstra, P.J., and Fitzgerald and White, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's dismissal of her complaint for a writ of mandamus, and defendant cross-appeals. We dismiss plaintiff's appeal and defendant's cross-appeal as moot.

Plaintiff, an Eastpointe resident, filed this action in the Macomb Circuit Court to compel defendant, in his capacity as the Eastpointe City Clerk, to certify an initiative petition to the county clerk for the November 5, 2002, general election. The initiative petition sought approval of Resolution No. 1470, a measure to approve the abolishment of the city's municipal court and the creation of a district court, as established by the Legislature in Chapter 81 of the Revised Judicature Act, MCL 600.8101 *et seq.* The trial court rejected defendant's claim that the initiative petition involved an administrative action, rather than a legislative action, and, therefore, was not subject to a vote of the electorate. Nonetheless, the court denied plaintiff's request for a writ of mandamus after determining that a provision of the Eastpointe Charter, Chapter VII, requiring approval by the Eastpointe City Council, was not satisfied. Plaintiff subsequently filed this appeal. Defendant has filed a cross-appeal, seeking affirmance of the result reached by the trial court or, alternatively, dismissal of plaintiff's appeal on the ground that it is moot.

After reviewing the record and considering the parties' arguments, we agree with defendant that this appeal should be dismissed as moot. In general, an issue is moot if an event occurs that renders it impossible for a reviewing court to grant relief. *B P 7 v Bureau of State Lottery*, 231 Mich App 356, 359; 586 NW2d 117 (1998). "A case is moot when it presents only abstract questions of law that do not rest upon existing facts or rights." *Id.* A reviewing court will not reach moot issues or declare legal principles that have no practical effect on the case

before it, unless the issue is one of public significance that is likely to recur, yet evade judicial review. *Federated Publications, Inc v Lansing*, 467 Mich 98, 112; 649 NW2d 383 (2002).

As relevant to this case, the November 5, 2002, general election has already occurred, thus preventing plaintiff's requested writ of mandamus (to compel the Eastpointe City Clerk to certify an initiative petition to the county clerk for the November 2002, general election). Additionally, although a principal issue in the case concerned whether the "resolution" of the "governing body" requirement of MCL 600.8176(1) constitutes an administrative or legislative action, after this appeal was filed the Legislature, through 2002 PA 681, enacted MCL 600.9938a, which provides for the commencement of the thirty-eighth district court, effective January 1, 2004. Plaintiff acknowledges that this legislation was preceded by the Eastpointe City Council's approval of an appropriate "resolution." In light of the foregoing, we conclude that the issues presented in this appeal are moot. Furthermore, we are not persuaded that review is warranted because the issues are likely to recur with regard to Eastpointe or other municipalities and yet regularly evade judicial review.

Finally, while arguably involving an issue of public significance, we choose not to engage in an abstract legal analysis regarding the role of the Eastpointe City Council with regard to initiative petitions for "ordinances" that may, in fact, fall within Chapter VII of the Eastpointe Charter. The principal duty of a reviewing court is to decide actual cases and controversies. *Federated Publications, Inc, supra*. Further, before reaching this issue, we would have to resolve whether the resolution constituted a legislative or administrative action, and this issue is one that we conclude is of no particular public significance. Hence, we dismiss plaintiff's appeal and defendant's cross-appeal as moot.

Dismissed.

/s/ Joel P. Hoekstra
/s/ E. Thomas Fitzgerald
/s/ Helene N. White